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11 **BEFORE THE ARIZONA CORPORATION COMMISSION**

12 **COMMISSIONERS**

13 DOUG LITTLE, Chairman
14 BOB STUMP
15 BOB BURNS
16 TOM FORESE
17 ANDY TOBIN

Arizona Corporation Commission

DOCKETED

JUL 27 2016

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16 IN THE MATTER OF THE FORMAL
17 COMPLAINT OF TED BECKER
18 AGAINST JOHNSON UTILITIES,
19 L.L.C.

DOCKET WS-02987A-16-0239

JOHNSON UTILITIES' MOTION TO
DISMISS TED BECKER'S FORMAL
COMPLAINT

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21 Pursuant to A.R.S. §§40-202(A) and 246, Johnson Utilities, L.L.C. ("Johnson
22 Utilities" or the "Company") hereby files this Motion to Dismiss Ted Becker's Formal
23 Complaint.

24 Mr. Becker's Formal Complaint fails to state a claim upon which relief can be
25 granted. Mr. Becker's Complaint seeks to have water lines extended; he does not allege that
26 he has signed a line extension agreement. The Commission lacks jurisdiction to adjudicate
27 civil disputes.
28

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1 The following Memorandum of Points and Authorities support this Motion to
2 Dismiss.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. FACTUAL BACKGROUND**

5 Based on representations by Mr. Nick Myers that 100% of potential customers would
6 sign up for water service and that there was some type of crisis, Johnson Utilities began to
7 construct additional water mains to serve the Bonanza Highlands area. To date, the
8 Company has laid more than 19,000 linear feet of pipe across seven phases of construction
9 at a cost in excess of \$417,000. Yet only 39 new customers have signed up to receive water
10 from Johnson Utilities. Of the ADEQ approved design plans for the Gary Road project, only
11 5 out of a potential 107 future customers have made a down payment to Johnson Utilities
12 to receive future water services. The Company's 24,500 water customers cannot reasonably
13 be expected to subsidize main extensions into an area with minimal demand. The Company
14 has conducted an awareness campaign that includes door-to-door contacts, mailed letters,
15 telephone calls, and even two community meetings in order to generate interest, and yet of
16 the 700 lots in the area, only those 39 have signed up for water service. The wildcat nature
17 of this subdivision, coupled with sparse interest from the lot owners therein, makes the
18 continued installation of water mains prohibitively expensive, and the Company cannot
19 continue to spend hundreds of thousands of dollars to bring service where there is minimal
20 demand.
21

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25 Mr. Becker alleges that he relied on a promise of line extensions. That allegation is
26 not within the jurisdiction of the Commission. Mr. Becker also seeks to have the
27 Company's owner put in jail.
28

II. LEGAL ARGUMENT

A. Becker's Complaint, Taken As True, Does Not State A Claim Under Arizona Law.

Rule 12(b)(6), *Arizona Rules of Civil Procedure*, provides for the dismissal of a petition if it fails "to state a claim upon which relief can be granted." Dismissal is appropriate when "as a matter of law . . . plaintiffs would not be entitled to relief under any interpretation of the facts susceptible to proof." *Rowland v. Kellogg Brown & Root, Inc.*, 210 Ariz. 530, 534, 115 P.3d 124, 128 (App. 2005). Becker's Complaint must be dismissed as a matter of law because he has failed to state any basis that entitles him to the relief requested.

Becker's Complaint fails to state a claim for which the Commission can grant relief. There is no allegation of any violation by Johnson Utilities of Arizona law, or any rule, regulation, or order of the Commission.

B. The Commission Lacks Jurisdiction to Adjudicate the Dispute.

The Commission's powers are described in Article 15, Section 3 of the Arizona Constitution and in Arizona's Revised Statutes, §42-202 *et seq.* Nowhere within those provisions is the Commission granted authority to adjudicate a civil dispute (misrepresentation) or to put the Company's owner in jail. As such, Mr. Becker's Formal Complaint should be dismissed.

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FILED this 27th day of July, 2016.

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18 COPY of the foregoing mailed this
19 27th day of July, 2016, to:

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